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December 18, 2018

**Via ECF and Hand Delivery**

Honorable Lewis A. Kaplan, United States District Judge  
Daniel Patrick Moynihan U.S. Courthouse  
500 Pearl Street  
New York, NY 10007

Re: In re: Customs and Tax Administration of the Kingdom of Denmark  
(SKAT) Tax Refund Litigation, Docket Number 18-md-2865 (LAK)

Dear Judge Kaplan:

Pursuant to this Court's Pretrial Order No. 6 dated November 20, 2018, this letter serves as a proposed order that outlines the role of Mark D. Allison of Caplin & Drysdale, Chartered, as Lead Counsel for the Defendants consolidated pursuant to the October 3, 2018 Order (the "Transfer Order") of the U.S. Judicial Panel on Multidistrict Litigation with respect to the above-captioned matter (the "Consolidated Defendants").

In compliance with the Pretrial Order No. 6, Lead Counsel conferred with other counsel for the Consolidated Defendants and proposes to define the Lead Counsel's duties, responsibilities, and other related matters as set forth below, with the overall goal and purpose of establishing an efficient process for managing discovery and other pretrial matters while recognizing the separate roles and authority of counsel for their respective defense clients.

**General Matters**

- Lead Counsel shall serve as the coordinator between counsel for the Consolidated Defendants and the Plaintiff with respect to discovery and other pre-trial matters and, where appropriate, identify, develop and resolve common positions of the Consolidated Defendants.
- Lead Counsel shall represent to the Plaintiff and the Court the common positions of the Consolidated Defendants after conferring with and obtaining consent and agreement from the Consolidated Defendants. Such consent and agreement, or objections, to any



representation by any Defendant, shall be communicated to the Lead Counsel promptly upon request.

- Lead Counsel shall communicate regularly with other counsel for the Consolidated Defendants to keep them apprised of any developments, including regarding any discussions with Plaintiff or its representatives, and will participate in separate discussions with individual counsel for the Consolidated Defendants at their request.
- All communications between and among Lead Counsel and the counsel for the Consolidated Defendants shall be privileged and confidential based on all applicable privileges, and no Defendant shall waive such privileges without the consent of all Consolidated Defendants.
- Each Defendant shall fully retain the right to assert their own privilege claims and/or defenses with respect to their own positions, and no such claims or defenses may be asserted or waived by Lead Counsel in that capacity.
- No media contact, press statements or releases may be made by any of the Consolidated Defendants or their respective counsel on behalf of all of the Consolidated Defendants, except by Lead Counsel, and only except as agreed and approved by counsel for the Consolidated Defendants. Any such media contact or press statement or release made by a particular Defendant or their respective counsel must be explicitly qualified as not being made on behalf of all of the Consolidated Defendants.

#### Discovery Matters

- Lead Counsel shall be primarily responsible for meet and confer obligations in connection with discovery issues or disputes that relate to all the Consolidated Defendants. Lead Counsel's satisfaction of the meet and confer obligations will be construed to be satisfied by all the consenting Consolidated Defendants, which will be communicated by Lead Counsel to Plaintiff's counsel.
- To the extent any of the Consolidated Defendants have separate or specific discovery issues or disputes not addressed by Lead Counsel, or such Defendants disagree with any proposed resolution reached by Lead Counsel, such Defendants may address these issues or disputes separately with Plaintiff's counsel. Lead Counsel will endeavor to identify any such Defendants to Plaintiff's counsel to the extent practicable.
- The Consolidated Defendants' responses and objections to the Plaintiff's discovery requests shall be prepared and served separately by counsel for each of such Defendants.
- The Consolidated Defendants may each be represented by their own counsel at depositions, but Lead Counsel shall work with all defense counsel to identify the appropriate methodology of taking each deposition with the goal of providing each counsel an opportunity to participate to ensure that relevant questions are propounded while minimizing the number of counsel questioning deponents.



- Lead Counsel shall coordinate with and propose to the Consolidated Defendants the discovery to be served on Plaintiff to ensure all discovery requests encapsulate the information, documents, and testimony sought by all the Consolidated Defendants while avoiding duplication. To the extent the discovery requests common to the Consolidated Defendants are insufficient with respect to a particular Defendant, such Defendant may serve their own separate requests to the extent otherwise permitted by the Court's order dated September 5, 2018 or any subsequent Court orders.

#### **Motion Practice and Court Appearances**

- All filings and motions that represent common positions of the Consolidated Defendants shall be made by Lead Counsel on behalf of all the Consolidated Defendants after prior consultation by Lead Counsel with the Consolidated Defendants.
- Any separate positions of the Consolidated Defendants relating to motion practice against Plaintiff shall be communicated to Lead Counsel to determine whether they should be incorporated and reflected in a single omnibus filing made for all of the Consolidated Defendants, or whether such positions should be addressed separately by an individual Defendant.
- All common arguments and presentations of the Consolidated Defendants shall be made before the Court by Lead Counsel, unless otherwise agreed by the Consolidated Defendants to appoint another counsel to appear for such purpose. However, in all events other defense counsel are permitted to appear and participate on behalf of their respective Defendant clients to support Lead Counsel or to present separate arguments that are particular to their respective Defendant clients.

#### **Fees and Cost Sharing**

- Lead Counsel shall separately identify fees and expenses associated solely with his role (as well as that of other Caplin & Drysdale attorneys and staff in support of such role) as Lead Counsel (apart from the Lead Counsel's work done solely for Lead Counsel's separate clients) and request that, based on the current number of the Consolidated Defendants represented by Lead Counsel, fifteen (15) percent of fees and expenses incurred in connection with the performance of the Lead Counsel's duties and responsibilities be allocated for cost sharing among other Defendants (those represented by defense counsel other than Lead Counsel).
- The cost sharing shall be allocated on a per capita basis (per Defendant, but not to be duplicated where a Defendant is named in more than one action), to be billed quarterly for reimbursement, with payment to be made within forty five (45) days thereof.
- If any of the Consolidated Defendants object to the proposed quarterly fee allocation and such objection is not resolved with Lead Counsel after a meet and confer among the relevant parties, the fee proposal shall be submitted to the Court *ex parte* for approval to determine the reasonableness of the allocated fees and expenses.



- The appropriate percentage for cost sharing shall be re-examined periodically, including as a result of changes in the number of the Consolidated Defendants.

In connection with this proposed order, I conferred with and have sought input from the counsel for the other Consolidated Defendants as well as from Plaintiff's counsel, each of whom have reserved their right to respond pursuant to the schedule set forth by the Court.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "MA".

Mark Allison, Esq.

cc: All counsel of record via ECF.

Via First Class Mail, without enclosures:

The Raubritter LLC Pension Plan